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IN THE

Supreme Court of the United States

OCTOBER TERM 1964.

No. 17

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1 National Marine Engineers' Beneficial Association, AFL-CIO,

Petitioner,

against

RAYMOND H. HARVEY, *et al.*, individually and on behalf of all other persons similarly situated,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR WORKERS DEFENSE LEAGUE AS *AMICUS CURIAE.*

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Statement of Interest.

This brief *amicus curiae* is filed by the Workers Defense League (WDL) with the consent of the parties, as provided in Rule 42 of the Rules of this Court.

Background of Workers Defense League.

The WDL, an unincorporated voluntary membership association, was formed in 1936 under the leadership of Norman Thomas who remains as its Honorary President. It has a membership of several thousand persons through-

out the country who are active largely in the professions and in various fields of public endeavor. The largest component of its membership, next to that of private citizens with records of public service, are officers of labor unions and persons professionally involved in the labor movement.

The WDL was established in an effort to organize a permanent active group which would give aid and assistance, legal and otherwise, to workers, to labor unions and to individuals in all walks of life who had received, in specific remediable situations, something less than social justice. The necessity for its organization originally stemmed from the desire to consolidate the efforts of a number of Ad Hoc Committees which had been formed in the thirties in response to a variety of specific problems arising from one phase or another of the union organizing drives then being conducted.

The activities of the WDL have not, however, been rigidly circumscribed. It has seen its task as the defense of individual rights staked out by law and the establishment of new rights, not yet defined by law, which, as our society evolves, become necessary to the dignity and freedom of the individual. It strives to enlarge the area of individual choice and freedom by the most effective means available.

The WDL has worked closely through the years with a large number of other organizations in the fields of civil rights and liberties and in the labor movement. It has a pro-labor bias with emphasis on the welfare of the worker and justice for the individual.

Interest of Workers Defense League.

For some years prior to the Senate Investigation conducted under the chairmanship of Senator McClellan, the WDL was concerned with problems of corruption and mis-

management in certain unions. It was convinced that those evils were the direct consequence of the denial of basic democratic processes in the operation and structure of the unions involved. It took the position, for a variety of reasons, that unions bore a heavier obligation—a deeper responsibility—than other private organizations to maintain the substance of democracy in their activities. First, the union's power is the power to govern the working lives of those for whom it bargains and, like all governing power, should be exercised democratically. Secondly, unions should be democratic because the power which unions hold over the individual worker's livelihood and welfare is largely derived from government. Unions, in the exercise of powers derived from government, should maintain the same democratic standards as are required of government itself. Thirdly, unions should be democratic because their principal moral justification is that they introduce an element of democracy into the government of industry. They permit workers to have a substantial voice in determining the conditions under which they shall work. This high objective of industrial democracy can be fulfilled only if unions are themselves democratic and only to the extent that workers are allowed to participate in the selection of their leaders and in the determination of union policy do they become so governed.

Senator McClellan observed that his Committee had during the course of its investigations "found time and again the denial of the right to vote, the denial of the right to work, the denial of the right to have a voice, the denial of the basic human rights on which our very freedom was founded." (*Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, p. 1103; hereinafter referred to as *Leg. Hist.*) The WDL was long aware that

these evils existed in certain small segments of the labor movement. It was convinced that the only proper and ultimate response to them was the enforcement of genuine democracy in their operations and activities. Senator McClellan's observation that "if you would give to the individual members of the unions the tools with which to do it, they would pretty well clean house themselves" (*Leg. Hist.*, p. 1102), was an observation long held as a tenet by the WDL. The WDL therefore welcomed the addition of Title I to the Labor-Management Reporting and Disclosure Act of 1959 (29 U. S. C., Sec. 411 ff.; hereinafter referred to as the Act). It welcomed it because it believed that its provisions, for the first time, made judicially enforceable, in a timely and effective manner, on the complaint of the individual member aggrieved, the infringement of basic democratic rights. The WDL, consequently, has a very special interest in the subject matter of the present litigation.

The WDL recognizes that for the overwhelming part unions are democratically conducted, designed for the benefit of their members and amply responsive to their interests. It has always had fraternal relationships with a large number of unions, with their elected officers and with the AFL-CIO itself. It therefore regrets that in the instant litigation it finds itself opposed, as a matter of principle, to the position taken by the AFL-CIO before this Court.

Since this Court will, in effect, in this litigation be setting the limits for the effectiveness of the Act as respects internal union democracy, the WDL urges that the decision of the Court of Appeals be affirmed—that, more generally stated, the widest scope possible be given to the vindication of the democratic rights of union members aggrieved by their infringement in offending unions under Title I of the

Act. The WDL is convinced that the welfare of the labor movement can best be maintained and enhanced by the vindication of the Respondents' position in this litigation.

Question Presented.

Whether a District Court has jurisdiction under Section 102 of the Act (29 U. S. C., Sec. 412) to provide a remedy *prior* to a union election where the union has so structured itself and has so formulated its governing statutes as to deprive a large portion of its membership in good standing of the right to nominate candidates for office in the union notwithstanding that the same conduct may *possibly* also be subject to remedy, *in part*, by the courts at the initiative of the Secretary of Labor, *subsequent* to the election, pursuant to Title IV of the Act?

Statement of Facts.

Respondents, members of District No. 1, National Marine Engineers' Beneficial Association (NMEBA), a labor organization having approximately 6,000 marine engineers as members, brought this action in the District Court for the Southern District of New York on their own behalf and on behalf of all other members similarly situated against District No. 1, its President and its Secretary-Treasurer. They sought to prevent the infringement of rights guaranteed by Section 101 (a) (1) of the Act and the Court's jurisdiction was predicated on Section 102 of the Act.

On January 1, 1961, NMEBA, by a referendum of its members, adopted a plan of reorganization which abolished its local unions, each of which had theretofore had jurisdiction over a single port. In place of these locals it

created subordinate district organizations, one of which was District No. 1. Each of these newly defined districts comprised certain regional groupings.

Prior to reorganization and under the National Constitution and local bylaws which then prevailed each member was guaranteed the right to nominate *any other member*, subject to certain reasonable eligibility requirements, for *any* local office and such nominations were called for, made and accepted at nomination meetings held in advance of local union elections. Nominations for national offices were called for, made and accepted at national conventions held in the year of elections, with each delegate to such conventions having the right to nominate *any other member* for national office subject to certain reasonable eligibility requirements. In the case of both national and local candidates for office prior to the reorganization the eligibility requirements were simply that a member be in good standing for a given period of years, the length of time being dependent on whether a national or local office was involved, and that, in effect, he have no conflicting interests to those of the union.

Following the reorganization, the District Executive Committee of District No. 1 *promulgated, without submitting to the membership for approval*, a series of by-laws which, with amendments similarly promulgated, drastically changed the mode of nomination of candidates for office. The effect of the changes may be summarized as follows: (1) A member could only nominate himself for office. He had no right to nominate any other member. (2) A member who had not already served as a full time paid union officer was required to have 180 days of employment on vessels covered by NMEBA contracts in each of two of the preceding three years in order to be permitted to nominate himself for District office. (3) Only members who had pre-

viously served as full time paid union officers were permitted to nominate themselves for District President. (4) Only those who had been members of NMEBA for five consecutive years prior to the attempt at self-nomination were permitted to nominate themselves for any District office. And (5) no member was permitted to nominate himself for more than one office in any one election.

In short, if the member did not desire to nominate himself for office or, even if he did, if he was "unqualified" to be a nominator under one or another of the newly promulgated restrictions on nominations, he could not nominate another for any office in the union whatsoever notwithstanding that he himself was a member in good standing.

The first election scheduled to be held following the promulgation of the new rules respecting nominations was to be held during the ninety day period commencing September 1, 1963. In the opinion of the WDL, as in the opinion of the Court of Appeals below, it is irrelevant to the issues presented to this Court for determination in this litigation, but it may be noted in passing, that each of the Respondents attempted to nominate himself as a candidate for office, but was "disqualified" by reason of one or another of the newly promulgated restrictions. Each of them, of course, was prohibited from nominating any other candidate for any office in the union whatsoever.

The Respondents prior to the scheduled election, commenced this action against the Petitioners alleging that their rights and privileges to nominate candidates for union office under Section 101 (a) (1) of the Act had been denied and requested that the court enjoin the scheduled election and direct the Petitioners to afford the Respondents, and all other members of District No. 1 similarly situated, a fair and equal opportunity to nominate candidates for office. The District Court granted the Petitioners' cross motion

to dismiss the complaint holding that (1) the limitation of nomination to self-nomination only was a reasonable restriction upon the rights of members of the union under Section 101 (a) (1) of the Act and (2) that the complaint in other respects, in essence, was a protest upon eligibility requirements for candidacy and as such was beyond relief under Title I of the Act. It held that the only relief available with respect to the latter phase of the complaint was pursuant to Title IV of the Act and remediable only *subsequent* to the election on a complaint which then might be filed by the Secretary of Labor in his discretion in the District Court.

The Court of Appeals reversed. It directed the issuance of the injunctive relief sought by the Petitioners and held that:

> "If the union's constitution and by laws had provided that only paid officials could make nominations for District President and that only incumbent officers or members with 180-day sea time in each of two of the three preceding years could make nominations for any other office, it could hardly be asserted that the members had 'equal rights and privileges * * * to nominate candidates.' Indeed, such a classification of union members would have been deemed invalid at common law, long before the LMRDA. See *Cameron* v. *International Alliance of Theatrical Stage Employees*, 118 N. J. Eq. 11, 176 Atl. 692 (Ct. Err. & App. 1935). Yet the combined effect of the eligibility requirements and the restriction to self-nomination is precisely that."

The Court of Appeals added:

> "We have no occasion now to consider whether such severe eligibility requirements as have here been imposed, especially as to the District Presidency, or the self-nomination restrictions, if either stood alone, would still infringe the guarantee of Sec. 101

(a)(1) to 'equal rights and privileges * * * to nominate candidates' or would only raise a question of denial of 'a reasonable opportunity * * * for the nomination of candidates' etc. under Sec. 401(e). The fact that plaintiffs sought unsuccessfully to nominate themselves and in that sense are complaining also as candidates does not blot out the main trust of their complaint—that the union has deprived members of the equal rights and privileges to nominate guaranteed by Sec. 101 (a) (1)."

Argument.

For a number of years prior to the enactment of the Act it had become fairly common knowledge that in a small minority of unions the absence or curtailment of democratic procedures had led to serious instances of mismanagement involving varying degrees of corruption and the perversion of the interests of their members. The American Civil Liberties Union in its historic study *Democracy in Labor Unions* (1952) brought informed public opinion to bear on the problem. The AFL and CIO were both then seriously concerned with its implications and subsequently, following the merger, took certain steps to rectify the situation. The Senate Investigation under the chairmanship of Senator McClellan demonstrated the enormous actual and potential opportunities for corruption which were involved and, likewise, established the close connection invariably existing between the evils disclosed and the autocratic character of the unions concerned. The testimony elicited by the McClellan Committee made remedial legislation imperative. The AFL-CIO itself supported the enactment of remedial legislation and it was, in fact, with its direct participation that the Kennedy-Ervin Bill was drafted. (McAdams, *Power and Politics in Labor Legislation*, p. 58 (1964)).

The problems requiring solution were both numerous and complex. No simple pat remedy was available for their rectification. This was especially the case because for the most part—the overwhelming part—unions were essentially democratic in their functioning and free of mismanagement and corruption. Their freely elected officials were largely men who brought to their duties a sense of obligation fiduciary in character. Moreover, the importance of union autonomy for union effectiveness was unquestioned. The Report which accompanied the revised Kennedy-Ervin Bill (S. 1555, 86th Cong., 1st Sess.) having observed that, "It needs no argument to demonstrate the importance of free and democratic union elections" (S. Rep. No. 187, 86th Cong., 1st Sess., p. 5; *Leg. Hist.*, p. 416), also acknowledged that:

> "A strong independent labor movement is a vital part of American institutions. The shocking abuses revealed by recent investigations have been confined to a few unions. The overwhelming majority are honestly and democratically run. In providing remedies for existing evils the Senate should be careful neither to undermine self-government within the labor movement nor to weaken unions in their role as the bargaining representative of employees." (S. Rep. No. 187, 86th Cong. 1st Sess., p. 5; *Leg. Hist.*, p. 401).

Congress had the difficult task, therefore, of formulating legislation which would not simultaneously curtail legitimate union activity while attempting to eliminate the patent evils which had been disclosed. The Senate Report outlined the considerations which had been adhered to in drafting the Kennedy-Ervin Bill:

> 1. . . . the desirability of minimum interference by Government in the internal affairs of any private

> organization . . . in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents.
>
> 2. Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs. . . . paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into the area of trade union licensing and destroy union independence.
>
> 3. Remedies for the abuses should be direct. Where the law prescribes standards, sanctions for their violation should also be direct . . . the legislation should provide an administrative or judicial remedy appropriate for each specific problem." (S. Rep. No. 187, 86th Cong. 1st Sess., p. 7; *Leg. Hist.*, p. 403.)

The Kennedy-Ervin Bill was itself the product of an evolution over previously considered proposals: the Kennedy-Douglas-Ives Bill (S. 2888, 85th Cong. 1st Sess.) and the Kennedy-Ives Bill (S. 3974, 85th Cong. 1st Sess.) both of which had failed of enactment.

The House, too, had a variety of bills before it for consideration (McAdams, *Power and Politics in Labor Legislation*, p. 151 (1964)) of which the most important were the Landrum-Griffin Bills (H. R. 8400 and 8401, 86th Cong., 1st Sess.). Under the Landrum-Griffin Bills all enforcement procedures, both with respect to the equivalent of the Bill of Rights for labor which they contained and with respect to union elections generally, were given directly to the aggrieved members themselves who could apply to the District Court for relief. No provision was made for intervention through the Secretary of Labor or any other administrative agency.

The Kennedy-Ives Bill, on the other hand, set up a scheme of regulation of union elections which was roughly equivalent to Title IV of the Act in that it provided for procedures which were exclusively post-election in character and with relief obtainable only on the initiative of the Secretary of Labor. The rationale for lodging the power solely with the Secretary was predicated on the acknowledgement of the drastic nature of and the immensely destructive and demoralizing effects involved in the resort to post-election remedies. The Kennedy-Ives Bill contained no provision preserving rights or remedies under state law whether pre- or post-election in character. The proposed legislation would have pre-empted practically the entire field of internal union control both procedurally and substantively.

The Kennedy-Ervin Bill made only one substantial change over the scheme embodied in the Kennedy-Ives Bill: it did not seek to pre-empt the entire field of judicial control of internal union affairs. It provided that all remedies and procedures available to members under state law prior to the holding of the election itself would remain effective. Following the union election, however, the enforcement of judicial remedies was solely on the initiative of the Secretary of Labor and solely pursuant to the proposed legislation.

This pattern of protection proved totally unacceptable to Congress. It was felt that it did not "begin to deal with the enormity of the situation which had been disclosed by the McClellan committee." (*Leg. Hist.*, p. 1114). Congressional sentiment was overwhelmingly of the opinion that the Kennedy-Ervin Bill, as introduced, was much too weak; that it failed to set forth explicitly the rights of union members as against offending unions; that it was

the task of organized labor to police itself and that to accomplish that task union members had to have suitable remedies available for use on their own initiative, without the consent of any administrative agency, if such policing were to prove genuinely effective; that not only was there need for new federal rights to be set forth explicitly in the proposed legislation; but, likewise, for access to tribunals which had the remedies available to make those rights meaningful; that the time to rectify an evil involving a denial of fundamental democratic procedures in an election was immediately upon the appearance of the infringement of the right, not after that infringement had taken place and the obnoxious result a *fait accompli;* and that above all administrative interference by the Secretary of Labor should be kept to a minimum.

That this was the consensus of Congress is demonstrated not only by the enactment of Title I, but even more so by the marked changes in form and content of Title I when enacted over that which it appeared to be and contain when first proposed by Senator McClellan. Its history exhibits both a constant concern with increasing its effectiveness as a pre-election remedy and an equally constant concern to place in the hands of the aggrieved unionist the initiative and ability to obtain his own protection. As originally proposed it was limited in the scope of the rights conferred, it made no provision for remedying the infringements of conferred rights on the initiative of the member aggrieved but placed its enforcement, as in Title IV, solely in the discretion of the Secretary of Labor and it, likewise, made no provision for the preservation of pre-election rights and remedies under state law.

The opposition to the McClellan version was not merely technical. It was argued that the McClellan Amendment was not sweeping enough in the rights conferred, that it

placed the protection in the hands of the Secretary when the intention was to give initiative to the members themselves, that there should be only the minimum regulation necessary to accomplish the purposes of the legislation, and that it did not preserve existing state rights and remedies. The opposition to it, as originally proposed, was directed solely to those aspects of the amendment which impaired its effectiveness. The Kuchel substitute was drafted to obviate each of these objections. It ultimately became Title I and was designed at every point to increase the remedies available to the unionist, on his own initiative, as against any effort to defeat his democratic participation in union affairs. It received the support finally of even those who at first had been the staunchest opponents of a Bill of Rights, Senator Kennedy and the AFL-CIO. It ultimately received their support and the support of the overwhelming majority of Congress notwithstanding the explicit repeatedly expressed intentions of the sponsors of the Kuchel Amendment to create as powerful a weapon as possible in the exclusive control of the unionist aggrieved.

Both the supporters and the original opponents of the McClellan amendment initially decried its weaknesses. None rejected it in principle. Yet both supporters and opponents voted for the Kuchel substitute which actually contained explicit provisions for enforcement and effectiveness not even considered at the time of its original introduction. Congress, at every stage, manifested every intention to make Title I as powerful a weapon as it could design in the hands of the individual wronged.

The temper and intent of Congress may also be gauged from the fact that following the approval of the Kuchel Amendment it went on to amend Title IV so as to give a candidate for office whose right to distribute campaign

literature had been wrongfully infringed the right, on his own initiative, to bring an action in the District Court and there obtain the relief appropriate under the circumstances (29 U. S. C., Sec. 481 (c)).

At every point, consequently, Congress manifested its intention to give to the individual unionist aggrieved, prior to the election, every remedy required to prevent the curtailment of his democratic rights. The post-election petition to the Secretary of Labor was intended as a last resort after all else had failed. It was not intended, in effect, to be the beginning and the end of the struggle for democracy in unionism. That Congress was aware that the rights conferred by Title I would prove largely meaningless unless a remedy was provided for their effective enforcement before the damage was done is undoubted.

The efficacy of pre-election remedies has often been the subject of comment. Thus, Prof. Summers has written:

> "Study of the cases emphasizes the importance of judicial intervention before the voting. Lawyers who have been involved in these cases agree that pre-election remedies are the only ones of any practical value. Correction of defects prior to the voting gives the members that to which they are entitled—a fair and honest election in the first instance. It also protects the union from the instability of an unsettled election and the cost and disruption of a new election. Post-election remedies provide too little protection for the members and too much burden for the union." (*Judicial Regulation of Union Elections*, 70 Yale L. J., at p. 1248).

As part of the same study Prof. Summers has directed attention to the factors which have motivated the courts more readily to intervene before rather than after an election. His comments are:

> "The willingness of the courts to intervene before the election springs from several sources. First, correction of invalidating defects saves the union not only the costs of a new election, but more importantly, the internal disruption caused by the lack of legitimatized leadership and the turmoil of another and more bitter campaign. These costs are too great to risk on the chance, usually remote, that those injured by the defects may win and that intervention will became unnecessary. Second, correction of invalidating defects before the election simplifies the court's function and lightens its responsibilities. It saves the court from inquiring whether the defect provided the margin of victory, or even deciding whether that inquiry is relevant. It also saves the court from the hard choice of either ratifying the results of an imperfect process or imposing on the union the burden of a new election. Third, even though the alleged defects have no merit and would not void the election, adjudication before the voting prevents the unsettled legal issue from distorting the process or clouding its outcome. Counting the ballots ends the contest and brings stability, instead of ushering in an extended period of uncertainty created by litigation" (Ibid., pp. 1244-1245).

Moreover, even under state law, the courts have frequently refused to upset an election already held where the complaining member had an opportunity to, but did not take advantage of, a pre-election remedy. *Ford* v. *Curran*, 36 L. R. R. M. 2407 (N. Y. Sup. Ct., 1955; not otherwise reported), is typical of such cases. There the court indicated that had relief been sought earlier, it would have granted it, but that it would not disturb an election already completed. It said that "A person in her position could not sit back and await the outcome of the election and then come into this court and get the extreme relief she seeks."

This bears out the observation that ' Through the cases runs a visible judicial reluctance to impose on the union the financial burden and the internal disruption which comes with voiding an election and ordering a new one'' (Summers, *Op. cit., supra*, p. 1247). This conclusion was predicated by Prof. Summers on an intensive study of all of the labor cases in the State of New York during a ten year period. He reports in that connection that ''The New York courts will review an election after the balloting, but the limited value of post-election remedies is attested by the fact that only one case has been found in which the court has ordered a new election—and that was one in which the officers who had been reelected were charged and later found guilty of the misuse of union funds'' (Ibid., p. 1247).

As the Act emerged after enactment the statutory scheme provided for three sets of remedies available to the aggrieved member. In the pre-election situation it provided him with the choice of going into the state court and relying on existing rights and remedies under state law or the choice of going into the District Court and availing himself of the new federal rights granted him pursuant to Title I. It was clearly intended by Congress that in the pre-election situation the aggrieved member have the choice of shopping for a forum most congenial to his interests. The Record shows:

> ''Mr. Kennedy. Which would govern, the Federal or the State law? In a case where a member's rights were in question in regard to freedom of assembly, or in regard to an election, which law would govern?
>
> Mr. Holland. I would say that both rights would prevail, and that both courts would be available, and both remedies would be available. Any plenary pro-

> vision against preemption would certainly preserve States' rights as they are, and it would, at the same time, create a new body of effective Federal law.
>
> Mr. Kennedy. In that case, there would be three protections" (*Leg. Hist.*, pp. 1109-1110).

After the election the aggrieved member had only the right to complain of the unfairness of the election to the Secretary of Labor. It was then solely in the discretion of the Secretary whether he would intervene by commencing an action in the District Court under Title IV of the Act.

The entire Congressional scheme evinced an intent to interfere administratively as little as possible with internal union affairs. It gave every encouragement to the practice of union democracy by emphasizing to the member that before the harm was done he had effective remedies available on his own initiative to protect him in his attempt to assert his rights. Throughout the evolution of the Act this intention became progressively more apparent. Congress was concerned to provide the rights and remedies by which union democracy could become a reality even in the most corrupt and mismanaged of unions. It did not evince an intent to put the government squarely in the middle of internal union affairs except after all remedies available without administrative intervention had failed. Congress was aware that judicial remedies had their greatest effectiveness in the pre-election stage. They were largely a dead letter when the election was completed. For Congress to have put the emphasis on Title IV procedures and to have made such proceedings the major source of its reliance, it would, in effect, have made the Secretary the arbiter of crucial issues of internal union politics. Congress sought no such result. It intended that Title IV be rarely applied and then only in situations, in practice, in which all prior attempts at remedy had failed. It was for this reason that

it did not make any specific infringement, or group of specific infringements of members' rights (except the failure to hold a timely election) the standard for judicial relief under Title IV. It limited such relief to the situation in which it could show by a preponderance of the evidence that the infringements complained of may have affected the outcome of the election. Admittedly, this is an almost insuperable obstacle to overcome. How can a member deprived of his right to nominate a candidate for office, for example, demonstrate to a court that had he been allowed to do so his candidate would probably have been elected or the incumbent defeated? In only the rarest instance can one reasonably expect to establish such a conclusion. To all intents and purposes an election concluded is likewise concluded for purposes of Title IV relief.

Congress in giving to the individual member aggrieved the right to bring his own action under Title I was aware that the nomination of a candidate in a union election, as in politics generally, is frequently for a purpose other than actually electing him to office. Most frequently, there are other purposes equally important to the proper internal administration of the union. It has been pointed out that:

> "The test apparently applied by the courts—whether the defect provided the margin of victory—is not only impossible to administer but overlooks one of the most important functions of union elections. Opposition groups in unions frequently have no serious expectation of winning but seek only to voice a protest and perhaps build a base for future elections. Defects in the election blunt the edge of their protest and undermine their base for the future; an uninflated majority solidifies the administration's power and discourages others from attempting to protest or challenge the incumbents. The very lack of a two-party system in most unions

> requires that the strength of the opposition be measured accurately. This is doubly true in elections of international officers where defeating the incumbents is extremely difficult and most elections serve little purpose other than as a focus for protest." (Summers, op. cit., p. 1248)

Predicated on these considerations amongst others Prof. Summers concluded that:

> "... effective enforcement of the statute must rest on pre-election remedies. Challenging an election after it has been conducted has proven too slow and burdensome to be of much practical value, and the availability of such a remedy under the federal statute should not cause the courts to withhold pre-election protection. The state courts have recognized that correcting defects prior to an election gives the members the fair election to which they are entitled; saves the union the costs and disruption of a second election; and lightens the court's responsibility. Congress was aware of these advantages and deliberately preserved pre-election remedies; the courts ought not be niggardly in their use. Only through such remedies can the courts give vital substance to the standards of democratic rights, fair competition, and honesty in union elections." (*Ibid.*, p. 1257)

It has been argued cogently that, in fact, the prime instrument for the enforcement of internal union democracy under federal law, whether the rights derive from Title I or Title IV, should be pursuant to the jurisdiction vested in the District Court by Title I. Certainly, as we have shown, Congress placed its primary emphasis on Title I. The argument, therefore, is that because pre-election remedies are the most effective, because they involve, for the most part, comparatively limited issues capable of rapid determination and equally rapid rectification, because

they cause little or no disruption in the business of the union, because they leave no doubt as to the legitimacy of leadership, because they place no administrative burden on the Secretary and because they add little burden to the business of the District Courts, all federal rights, whether granted under Title I or under Title IV, should be and properly are enforced in Title I proceedings. (Summers, *Pre-emption and the Labor Reform Act—Dual Rights and Remedies*, 22 Ohio S. L. J. 119 (1961)). This, we submit, is the intent spelled out in the debates prior to the enactment of the Act. Nowhere is there spelled out in the debates the intent to make of the rights conferred by Title I, an illusion. Nowhere in the debates is there even an intimation that a right given under Title I was unenforceable if something resembling it or its counterpart was to be found in Title IV. In fact, even the original opponents of the Bill of Rights stressed the efficacy of state court pre-election remedies and by inference expressed the intent of giving primacy to Title I remedies while reserving Title IV only for the most exceptional situation.

That it was the clear intention of Congress to have a liberal construction placed upon Title I in order that maximum effectiveness might be achieved becomes remarkably clear when the debates on the Kuchel Amendment are considered. The debates clearly evidence the Congressional intent to place as much of the power to alleviate infringements of democratic rights in the hands of the individual member as possible. Senator Kuchel, in introducing his compromise version of Title I said with reference to Section 102 of the Act that:

> "... here is one of the major changes in the proposal. The amendment of the Senator from Arkansas provided that the Secretary of Labor might, on behalf of the injured or aggrieved member, have the right

> to litigate the alleged grievance and to seek an injunction or other relief. We believe that giving this type of right to the aggrieved employee member himself is in the interest of justice, and therefore we propose to eliminate from the bill the right of the Secretary of Labor to sue in his behalf." (*Leg. Hist.*, p. 1232).

Senator Clark added:

> "The amendment does five things, and the most important is that it protects the legitimate rights of the rank-and-file members of unions. . . . it takes the Federal bureaucracy out of this bill of rights and leaves its enforcement to union members, aided by the courts" (*Leg. Hist.*, p. 1233).

The Kuchel Amendment had not originally provided for specific protection to the member under the union's constitution and bylaws themselves. Senator Holland in arguing for a broadening of the protection afforded by the Kuchel Amendment in this respect suggested that there be added a provision specifically protecting these rights under state and federal law in addition to the rights granted and protected under Title I itself. In doing so he stated:

> "It seems to me that such a reference should be added, to make complete the showing that nothing is excluded by the inclusion of the rights which have been included, or the details which are included in any of these sections" (*Leg. Hist.*, p. 1233).

The intent to give as liberal an interpretation as possible to Title I cannot reasonably be doubted.

Moreover, it was made clear that that portion of Section 101 (a) (1) which makes the rights granted subject to "reasonable rules and regulations in such organization's

constitution and bylaws" did not signify an intention to dilute the extent of the right conferred. The record shows:

> "That is a procedural provision. It deals with the right of a private or semi private organization to control its meetings by reasonable rules. But in the view of all of us who propose the amendment, it is not believed that this language on the proviso limits any substantive rights, contemplated and defined in the entire title *or otherwise in the bill*" (*Leg Hist.*, p. 1234; italics added)

Given the intent disclosed in the debates it is highly significant that the vote for its approval was 77 to 14 with even its originally strongest opponent, Senator Kennedy, voting for it. Senator Kennedy's original opposition, incidentally, was solely to the fact that as initially presented by Senator McClellan the Bill of Rights was limited in its effectiveness. Senator Kennedy stated:

> "My objection to the amendment is not that I think the union members should not be provided with these rights. My objection is that I think members of unions are provided those rights more satisfactorily by present State law, by the provisions of the bill, and by the Taft-Hartley Act.
>
> I say that because I think the amendment raises the question of preemption. In other words, if the proposal were enacted, the present rather exhaustive remedies provided under the common law of the various States might be wiped out, and only the rights suggested by the Senator from Arkansas would then be available to union members" (*Leg. Hist.*, p. 1108).

With the modifications embodied in the Kuchel Amendment strengthening the hand of the individual unionist as against his union by permitting actions by him predicated on state rights and enforceable by remedies in state

courts, in addition to actions by the member in the District Court, Senator Kennedy's initial objection was obviated and he, himself, supported Title I. The AFL-CIO, too, supported Title I with full awareness of the Congressional intent behind it.

Considering all of the foregoing factors and relating them specifically to the issues involved in the instant litigation, it is interesting to observe that the issues need not *and should not* be formulated in the manner indicated by the Petitioners. They, of course, have their obvious reasons for formulating them as they do. But considered realistically what is the situation? Is it that Title I was designed to allow each member the empty gesture of forwarding a letter to the union marked "nomination" which would upon receipt promptly be thrown into a waste basket, or was it that he was intended to be given the genuine opportunity to make a nomination? We submit, as the Court of Appeals below decided, that it is the latter. Are not the restrictions entitled "eligibility" in reality the standards to be met in order to qualify as a nominator? This is precisely what they are. As such they constitute a naked and absolute infringement of the right to nominate candidates specifically granted by Title I and over which the District Court is specifically given jurisdiction. If, incidentally, they also constitute a violation of the right to have a "reasonable opportunity" to nominate candidates under Title IV, shall they go unprotected in this action because they have a double protection in the statute?

Conclusion.

For the foregoing reasons, and for the reasons set forth in the brief for the Respondents, the judgment of the Court of Appeals below should be affirmed.

Respectfully submitted,

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